STATE OF MICHIGAN

IN THE SUPREME COURT

APPEAL FROM THE COURT OF APPEALS

IN RE PETITION BY TREASURER OF
WAYNE COUNTY FOR FORECLOSURE

WAYNE COUNTY TREASURER,

Petitioner,

and

MATTHEW TATARIAN and MICHAEL KELLY,

Intervening Parties-Appellants,

v

PERFECTING CHURCH,

Respondent-Appellee.

/

Supreme Court No. 129341

Court of Appeals No. 261074

Circuit Court No.02-220192-PZ

AMICUS BRIEF OF WESTHAVEN MANOR LDHA LP

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QUESTIONS PRESENTED FOR REVIEW

1. Does MCL 211.78*l* deprive a circuit court of jurisdiction to amend or modify, pursuant to MCR 2.612, a judgment of foreclosure entered under MCL 211.78k?

2. To the extent the provisions of 2003 PA 263 may operate to deprive a circuit court of jurisdiction to amend or modify a judgment of foreclosure under MCL 211.78k, are such provisions violative of this Court's exclusive rulemaking authority under Const. 1963, art 6, §5?

3. Does due process require that a property owner, who has never been deprived of possession of his or her property, but who has been adversely affected by a judgment of foreclosure entered without notice or otherwise in violation of due process, must be afforded an opportunity to modify, set aside or otherwise amend that judgment of foreclosure?

INTEREST OF AMICUS

Westhaven Manor Limited Dividend Housing Association Limited Partnership ("Westhaven Manor LDHA LP") is a limited dividend housing association which owns Westhaven Manor Apartments, a 3-story, 144 unit senior housing facility located in Westland, Michigan. Pursuant to The Michigan State Housing Development Authority Act of 1966, MCL 125.1404 *et seq.*, Westhaven Manor obtained a resolution and subsequent ordinance from the City of Westland declaring that Westhaven Manor Apartments "shall be exempt from the payment of all taxes." Instead, Westhaven Manor makes an annual service fee payment to the City in lieu of all taxes. Westhaven Manor does not receive property tax bills or notices.

Apparently, certain special drain assessments were levied against Westhaven Manor in 1997 and 1999. No notice was ever received, and therefore the assessments were unpaid. Consequently, the Wayne County Treasurer initiated tax foreclosure proceedings against Westhaven Manor, along with literally thousands of other parcels in Wayne County, pursuant to the provisions of the General Property Tax Act ("GPTA"), MCL 211.1 *et seq.* No notice was ever received by Westhaven of the tax foreclosure proceedings. The Treasurer's authorized representative who made a "personal visit" to Westhaven Manor, as required by MCL 211.78*i*(3), did not go to the apartments' general office, but instead certified to the court that the property was vacant. The tax lien on Westhaven Manor's property was judicially foreclosed in March, 2002. In November, 2002, Westhaven Manor was "sold" by Wayne County to a third party for $19,000. The apartment complex is worth multiple millions of dollars.

Westhaven Manor did not learn any of this until February, 2003, when it ordered a title search in conjunction with a planned mortgage refinancing transaction. This title search revealed the tax foreclosure judgment of March, 2002, as well as the "sale" by Wayne County to a third party in November, 2002.

Westhaven Manor has, at all times, remained in full possession of its property. In March, 2003, Westhaven Manor filed a motion to vacate the Foreclosure Judgment, pursuant to MCR 2.612(C). This motion was granted by the circuit court. Subsequently, in a published opinion, the Court of Appeals determined that the circuit court did have authority to entertain the post-judgment motion, but remanded for a determination of whether the Treasurer's failures amounted to a due process violation. *See, In re Wayne Co Treas Petition*, 265 Mich App 285; 698 NW2d 879 (2005), *lv app den'd* 474 Mich 862 (2005). The case remains pending on remand in the Wayne County Circuit Court.

This Court has now agreed to hear and determine, in the instant case, the issue of whether or not a circuit court has authority to entertain a post-judgment motion in the context of a tax foreclosure judgment under the GPTA. This directly affects Westhaven Manor. Therefore, Westhaven Manor has a distinct interest in the resolution of these issues, and requests that it be granted *amicus curiae* status here, to support Appellee and to urge affirmance of the Wayne County Circuit Court's order in this matter.

ARGUMENT

I. MCL 211.78L DOES NOT DEPRIVE THE CIRCUIT COURT OF JURISDICTION, UNDER MCR 2.612(C), TO ENTERTAIN A MOTION TO MODIFY OR AMEND A JUDGMENT OF FORECLOSURE UNDER MCL 211.78K

MCL 211.78*l*(1) and (2) provide as follows:

> **(1) If a judgment for foreclosure is entered under section 78k and all existing recorded and unrecorded interests in a parcel of property are extinguished as provided in section 78k, the owner of any extinguished recorded or unrecorded interest in that property who claims that he or she did not receive any notice required under this act shall not bring an action for possession of the property against any subsequent owner, but may only bring an action to recover monetary damages as provided in this section.**
>
> **(2) The court of claims has original and exclusive jurisdiction in any action to recover monetary damages under this section.**

Appellant in this case, and various *amici* including the Michigan Department of Treasury, argue that this statutory provision operates to deprive the circuit court of all authority to hear or determine a post-judgment motion, under MCR 2.612(C), for vacation, correction, modification or other amendment of a tax foreclosure judgment entered under MCL 211.78k. Thus, an interpretation of these statutory provisions is crucial and determinative here. As will be shown below, the plain language of the statute simply does not support Appellant's position. Further, under the facts of this case, MCL 211.78*l* is not even applicable.

A. The Plain Language of the Statute Does Not Prohibit Any Post-Judgment Motions

This Court has repeatedly held that it is the function of the judiciary to ascertain and give effect to the intent of the Legislature as expressed in the plan and unambiguous language of its statutes. *Gladych v New Family Homes, Inc*, 468 Mich 594, 597; 647 NW2d 705 (2003). If a statute is expressed in plain and unambiguous language, no judicial construction is necessary or permitted, and the statute must be enforced as written. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). Words and phrases should be accorded their plain and ordinary meaning, considering the context. *Id.* at 237.

The plain language of MCL 211.78*l*(1) states that an owner of an interest in property, whose interest is extinguished by entry of a judgment of foreclosure under MCL 211.78k, and "who claims that he or she did not receive any notice" required under the GPTA tax foreclosure procedures:

> **[S]hall not bring an action for possession of the property against any subsequent owner, but may only bring any action to recover monetary damages as provided in this section.**

This statutory provision plainly and simply states that a prior owner claiming failure of notice in the tax foreclosure process cannot bring an action for possession of the property against any subsequent owner, but instead may only bring an action for monetary damages, over which the Court of Claims has exclusive jurisdiction. Nothing in this language even remotely suggests that the Legislature intended in any way to deprive a circuit court of its authority, both inherent and under the Michigan Court Rules,

to amend, modify or vacate any judgment previously entered by that court. That is simply not what the language says. It only prohibits an action for possession.

B. MCL 211.78*l* is Not Even Applicable on the Facts Presented.

Indeed, under the facts of this case and for similarly situated, in-possession property owners, a motion for relief from judgment pursuant to MCR 2.612 should not even implicate this statutory provision. By its own terms, MCL 211.78*l* only prohibits "bring[ing] an action for possession ... against any subsequent owner," and limits a party in such a case to an action for money damages.

1. A Motion under MCR 2.612 is not an action for possession of property.

Clearly, a motion under MCR 2.612 is not an "action for possession of property." An "action" is a civil or criminal judicial proceeding. *CAM Construction v Lake Edgewood Condo Ass'n* 465 Mich 549, 554-555; 640 NW2d 256 (2002)(*quoting* Black's Law Dictionary (7th ed).). Furthermore, the Revised Judicature Act of 1961, MCL 600.101 *et seq.*, contains provisions which specifically recognize an action for possession of real property. *See, e.g.*, MCL 600.2918(4). It must be presumed that the Legislature, in enacting MCL 211.78*l*, was aware of such statutory provisions, and well aware of the specific meaning and import of the term "action for possession of property." *See, Nemeth v Abonmarche Development, Inc* 457 Mich 16, 43; 576 NW2d 641 (1998).

Therefore, it must also be assumed that the Legislature, in using the language that it did, understood that what is was prohibiting by MCL 211.78*l*(1) was not a motion for relief from judgment, but rather the commencement of a civil action to recover possession of real property, forfeited for non-payment of taxes, from a subsequent owner

of that property. In other words, the very language of this statutory provision presupposes that the prior owner is no longer in possession of the property which has been subject to tax foreclosure proceedings. In such a case, the out-of-possession prior owner is prohibited from bringing an action to recover possession, and must be limited to an action for damages in the Court of Claims. This provision simply does not apply to the case of any owner who is still in possession of the premises, but who may be otherwise adversely affected by a tax foreclosure judgment, such as Appellee Perfecting Church in this case. Accordingly, MCL 211.78*l* does not even apply on the facts presented here.

2. The provision "but may only bring an action to recover monetary damages" merely modifies the previous clause, and does not establish a universal prohibition on post-judgment motions in this context.

Appellant and others seem to argue that the second half of this sentence, the clause beginning "but may only bring an action to recover monetary damages ..." somehow trumps the remainder of this statutory provision, and expresses a legislative intent that an action for damages in the Court of claims is the sole and exclusive remedy for any and all parties who claim that their interest in real property has been wrongly extinguished or otherwise affected in tax foreclosure proceedings. Such an expansive reading is wrong, however, because it ignores the plain language of the statute, and because it ignores the realities of the facts of this very case.

Appellant urges that this Court find the statutory language "but may only bring an action to recover monetary damages" decisive in <u>all</u> cases, and that this provision

deprives the circuit court of all power to modify its own judgment once entered. Such an expansive reading defies the plain language of the statute.

If the Legislature truly intended this result, and truly intended, by adopting MCL 211.78*l*(1), that the sole remedy for each and every property owner affected by a failure of notice in the foreclosure process was an action for money damages, and nothing else, then the preceding clause of the statute is completely unnecessary, and is mere "surplusage." For if the Legislature intended this result, the portion of MCL 211.78*l*(1) prohibiting "bringing an action for possession of the property" is completely irrelevant and unnecessary. It would have been sufficient for the statute to simply state that an affected property owner may only bring an action for damages.

Such an interpretation renders a significant portion of MCL 211.78*l* as surplus, mere extra words. But in construing statutes, a court must give effect to every word, and avoid a construction which would render any part of the statute surplusage or nugatory. *Griffith v State Farm Automobile Ins*, 472 Mich 521, 533-534; 697 NW2d 895 (2005).

Accordingly, it cannot be the case that the "but may only bring an action for monetary damages" clause of MCL 211.78*l*(1) applies universally, to all persons affected by tax foreclosure proceedings, regardless of whether they are in-possession or out-of-possession of the property in question. Instead, it is clear that this clause merely modifies the immediately preceding clause prohibiting an action for possession of property. It is intended only to provide a different remedy, to those owners whose right to bring such a cause of action has been legislatively eliminated by that preceding clause. Reading the statute otherwise renders significant portions of it irrelevant, which this Court cannot do.

The argument that an action in the court of claims for monetary damages is the sole and exclusive remedy in all cases also ignores the very facts of this case. As in *Westhaven*, *supra,* the property owner in the case at bar, Perfecting Church, has never lost possession of the property subject to tax foreclosure. Under such circumstances the very idea that the property owner's sole and exclusive remedy is an action for damages is so fraught with contradiction and peril as to make it unworkable. Of what use is a cause of action for damages to a party still in possession of property? On what basis would the court of claims determine the appropriate amount of damages? Although MCL 211.78*l*(4) states that damages are to be calculated based on the property's fair market value at the time of the judgment of foreclosure, how can the court of claims ward such damages to one still in possession of the property? More importantly, why would a party still in possession of property be satisfied with a cause of action for damages? Why would such a party even initiate such a cause of action? This Court cannot presume that the Legislature has such little foresight when it enacts laws.

The problems here become even more complicated when one introduces another variable, the tax sale purchaser. Presumably, such a party would have five (5) years from the date of the tax sale deed to bring an action seeking possession thereunder. MCL 600.580(1). But, MCL 211.78*l*(3) states that an action for damages in the court of claims must be commenced within two (2) years of entry of the judgment of foreclosure. Thus, a tax sale purchaser has a distinct incentive, in such a case, to wait until the two-year limitations period of MCL 211.78*l*(3) expires, before bringing any action for possession of the property. That way the original, foreclosed owner will be time barred from bringing any action for damages. Such gamesmanship is directly contrary to the

expressed intent of the legislation in adopting the 1999 "streamlined" tax foreclosure process. In fact, Appellant's interpretation, under the facts of this case, would encourage tax sale purchasers to do nothing with their property for at least two years! This cannot be the result intended by the Legislature. It is clear that MCL 211.78*l* was enacted solely for situations (unlike the case at bar) where the original, pre-foreclosure judgment owner is no longer in possession of the subject property. As such, that statute is clearly inapplicable on the facts of the case at bar.

II. ARGUABLY, THE AMENDATORY PROVISIONS OF 2003 PA 263 PURPORT TO DEPRIVE THE CIRCUIT COURT OF JURISDICTION TO ENTERTAIN ANY POST-JUDGMENT MOTION UNDER MCR 2.612 RELATIVE TO A TAX FORECLOSURE JUDGMENT. IF SO, HOWEVER, THOSE PROVISIONS ARE UNCONSTITUTIONAL.

2003 PA 263, effective December 29, 2003 (hereinafter "Act 263"), significantly amended portions of MCL 211.78k. Of particular importance in this case, Act 263 added the following sub-section (g) to MCL 211.75k(5):

> **A judgment entered under this section is a final order ... and except as provided in subsection (7)[1] shall not be modified, stayed or held invalid after [the effective date of the judgment][2] [MCL 211.78k(5)(g)]**

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[1] MCL 211.78k(7). This subsection provides for an appeal of the judgment of foreclosure to the Court of Appeals.

[2] The statute states that a foreclosure judgment shall not be modified, stayed or held invalid "any time after the March 31 immediately succeeding he entry of a judgment." MCL 211.78*k*(5)(g). However, MCL 211.78*k*(5) requires that the foreclosure judgment must be entered by the circuit court "not later than the March 30 immediately succeeding the hearing," and that such judgment will have an effective date of "March 31 immediately succeeding the hearing." Thus, the effective date of the judgment and the "March 31 immediately succeeding entry of the judgment" will always be the same date.

Although Appellant here does not argue it, possibly because Act 263 did not take effect until after entry of the judgment of foreclosure in this case, it is at least arguable that the intended effect of Act 263 is to deprive the circuit court of authority to entertain a post-judgment motion under MCR 2.612 after December 29, 2003. If so, this is very significant for the case at bar in two respects: First, it demonstrates clearly that the Legislature understood that MCL 211.78*l* does not deprive a circuit court of authority to entertain a post-judgment motion. Second, and to the extent that Act 263 purports to accomplish that very end (i.e., depriving the circuit court of authority to entertain a post-judgment motion), it is clearly unconstitutional and should be struck down by this Court.

A. Act 263 Itself Demonstrates that Appellant's Construction of MCL 211.78*l* is wrong.

If nothing else, the very fact that Act 263 was adopted by the Legislature proves that Appellant's construction of MCL 211.78*l* is wrong. If, as Appellant suggests, that statutory provision (MCL 211.78*l*) already deprives a circuit court of authority to modify its judgment of foreclosure pursuant to a motion under MCR 2.612(C), then the above-quoted language of Act 263 is absolutely unnecessary.[3] In fact, there would be no need to add sub-section 78k(5)(g) to the GPTA at all. But that clearly was not the case, and the Legislature recognized it. By doing so, the Legislature has expressly admitted that, prior to December 29, 2003, no provision of the GPTA, including MCL 211.78*l*, prohibited a circuit court from acting, upon motion and under proper circumstances, to modify, amend, vacate or otherwise alter a judgment of foreclosure.

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[3] **As noted previously, this Court must eschew any interpretation which renders portions of a statute nugatory or surplusage. *Griffith, supra.***

B. Assuming Act 263 Purports to Deprive a Circuit Court of Jurisdiction to Entertain a Post-Judgment Motion, It is Unconstitutional.

Assuming that the effect of Act 263, subsequent to December 29, 2003, is to deprive the circuit court of authority or jurisdiction to entertain a motion under MCR 2.612(C), then this Court should find the provisions of that statute unconstitutional. This is because it violates this Court's exclusive rulemaking authority under Const. 1963, Art. 6, §5.

It is beyond question that the authority to determine rules of practice and procedure in the courts of this state rests exclusively with this Honorable Court, under Const 1963 art. 6, § 5. *McDougall v Schanz,* 461 Mich 15, 26; 597 NW2d 148 (1999). Thus, to the extent that MCL 211.78*k*(5)(g) constitutes a legislative attempt to regulate matters of practice and procedure, as opposed to substantive law, the statute must give way to the court rules which have been promulgated by this Court. *Id., at 36.*

As discussed above, MCL 211.78k(5)(g) on its face presumably prohibits the circuit court from entertaining any post-judgment motions to modify, vacate or amend a judgment of foreclosure once it has become effective under MCL 211.78k. The only statutorily prescribed avenue for relief from a judgment of foreclosure at that point is to follow the appellate procedures described in MCL 211.78k(7).[4] Thus, this statutory provision is a legislative attempt to regulate how, and under what circumstances, a circuit court may entertain a request to modify its own judgment.

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[4] **Of course, the ability and opportunity to appeal a Judgment of Foreclosure entered, as in this case and in the case of Westhaven Manor, based upon misrepresentations of fact and the County Treasurer's failure to even substantially comply with statutory notice procedures, is cold comfort indeed to a property owner, who has no way of knowing the Judgment of Foreclosure even exists until well after the 21-day appeal period has expired!**

But such matters are classically matters of practice and procedure. In the criminal context, it has been held that the court rules governing the setting aside of a previously accepted guilty plea concern matters of practice and procedure, and thus control over any contrary statute. *People* v *Strong*, 213 Mich App 107, 112-113; 539 NW2d 736 (1995). By analogy, MCR 2.612, which in the civil context governs the circumstances under which a circuit court may modify or otherwise offer relief from a previously entered judgment, is also clearly a matter of practice and procedure.

Since the circuit court's ability to modify or offer relief from its own judgments is a classic example of a purely procedural matter, the court rule(s) governing such procedure must control over any contrary statutory provision, including MCL 211.78k(5)(g). The provisions of Act 263 do not attempt in any way to create, take away, or modify substantive legal rights. They represent nothing more and nothing less than the Legislature attempting to re-write the rules of procedure for circuit courts, vis a vis the modification or alteration of judgments issued by that Court. The courts of this state must have an ability to modify, correct, amend or otherwise alter their own judgments when it appears that such is necessitated by the interest of justice, subject only to the exclusive rulemaking powers of this Honorable Court. The Legislature cannot intrude on this purely judicial function. Here, by adopting Act 263, the Legislature has wrongfully and improperly intruded upon that function. Accordingly, this Court must strike down those provisions of Act 263, which improperly attempt to prescribe procedural rules for the court of this state.

III. DUE PROCESS REQUIRES THAT A PROPERTY OWNER, WHO HAS NEVER BEEN DEPRIVED OF POSSESSION OF HIS OR HER PROPERTY, BUT WHO HAS BEEN ADVERSELY AFFECTED BY A TAX FORECLOSURE JUDGMENT ENTERED WITHOUT NOTICE OR OTHERWISE IN VIOLATION OF SUE PROCESS, MUST BE AFFORDED AN OPPORTUNITY TO MODIFY, SET ASIDE OR OTHERWISE AMEND THAT JUDGMENT OF FORECLOSURE.

Both the federal and Michigan constitutions require that one be given notice an opportunity to be heard before being deprived of a property interest. *Jones v Flowers*, 547 US _____ (2006); *Dow v Michigan*, 396 Mich 192, 205-206; 240 NW2d 450 (1976). In the case at bar it is not seriously disputed that the tax foreclosure judgment at issue was entered without proper notice to the property owner. To deny, as Appellant apparently would, such a property owner of the right to demonstrate, by post-judgment motion that the tax foreclosure should never have been entered in the first place, merely compounds this error.

Ultimately, and at the very least, this Court must consider the particular plight of property owners such as Perfecting Church and Westhaven Manor. Both of these cases present property owners who are ordinarily exempt from property taxes, and therefore not accustomed to receiving tax notices. Both cases involve egregious failures by the foreclosing governmental unit to observe the statutory notice requirements of the GPTA. Finally, both cases involve property owners who have <u>never</u> lost possession of their property. Certainly, the Legislature never intended that in such a case, an owner of property which is currently being put to productive and publicly beneficial use should be deprived of that property, without proper notice, and without adequate protections of due process, due to the errors and failings of the government.

For such an owner, the statutory remedy of MCL 211.78*l* is not effective. The property owner has never been put out of possession of his or her property. Rather, there is now a cloud upon his or her previously good title. Why would such an owner, still in possession of his or her property, be even remotely interest in an action for money damages? Such an owner would be much better off remaining in possession of his or her property, and having an opportunity to remove the cloud created on his or her title by the foreclosure judgment by way of a post-judgment remedy such as provided by MCR 2.612.

This is entirely consistent with the Legislature's express findings and intent in adopting the "streamlined" foreclosure proceedings of 1999 PA 123, as set forth in MCL 211.78(1):

> **The legislature finds that there exists in this state a continuing need to strengthen and revitalize the economy of this state ... by encouraging the efficient and expeditious return to productive use of property returned for delinquent taxes. (Emphasis added).**

Thus, it was the Legislature's express finding and assumption in adopting 1999 PA 123 that property returned for delinquent taxes was not being put to "productive use." This is because such property has, in all likelihood, been abandoned by the non-taxpaying owner. The "efficient and expeditious return to productive use" of such property is encouraged when an absentee owner, who later contends that notice of tax foreclosure proceedings was not properly given, is also prohibited from commencing an "action for possession" against a subsequent owner. As *amicus* Michigan Department of Treasury notes in its brief, a major perceived flaw of the statutory scheme pre-dating 1999 PA 123 was that it did not prohibit such actions, and therefore title-insurance companies would

not insure tax-foreclosed properties without a quiet title action. This inhibited the sale of tax-foreclosed properties to third parties willing to put them to productive use.

These same concerns are not present when, as in the case at bar, the owner of the property interest extinguished by a tax foreclosure judgment has never abandoned the property, and has never been deprived of possession of the property. In such a case, the property is already being put to productive use. Indeed, in the case at bar it is part of a church; in *Westhaven,* a senior housing facility. Furthermore, and as discussed above, in such a case the property owner would have no reason to "bring an action for possession of the property" against anyone, let alone a "subsequent owner."

A property owner still in possession, but advised of a prior tax foreclosure and/or subsequent tax sale of his or her property, would have no reason to consider an "action to recover monetary damages," i.e., the fair market value of their interest in the property. Such a remedy is utterly pointless to one still in possession of property. Instead, the logical thing such a property owner would do is petition the appropriate court to remove the cloud placed upon his or her title by the foreclosure judgment and any subsequent sale. This can be accomplished, in appropriate circumstances, by bringing a motion, under MCR 2.612 to modify, alter or vacate the original judgment which purported to extinguish the owner's title.

There is nothing in the plain language of MCL 211.78*l* to suggest the Legislature intended to prevent such an occurrence in the limited class of cases where an owner is still in possession of property, but is erroneously subjected to tax foreclosure without adequate notice or due process. It is clear, from both the plain language of the statute itself, as well as the Legislature's expressed intent to expedite the efficient return

to productive service of tax delinquent properties, that MCL 211.78*l* was enacted solely to prevent an absentee owner from later attempting to bring a cause of action seeking to recover property from a subsequent owner, by arguing failure to receive notice of tax foreclosure proceedings. Instead, that absentee owner is limited to recovery of money damages if a lack of notice can be proven. Nothing in this statute addresses the unique factual situation presented in the instant case, where an owner still in possession simply seeks relief from an erroneous judgment. More importantly, nothing in the plain language of the statute prohibits a post-judgment motion under MCR 2.612.

Under the interpretations urged by Appellant and others, this would not be possible. Such a result contradicts the very intent of Legislature in streamlining the GPTA, and indeed offends the traditional notions of justice and fair play on which or concepts of due process are based. Accordingly, Westhaven Manor urges this Court to reject Appellant's arguments, and to affirm the decision of the Wayne County Circuit Court in this matter, and to hold that due process requires that, at a minimum, a property owner still in possession must be afforded an opportunity to set aside or otherwise modify a foreclosure judgment.

CONCLUSION

For all the above-stated reasons, Westhaven Manor respectfully requests that this Honorable Court hold that the provisions of MCL 211.78*l* do NOT deprive a circuit court of jurisdiction to entertain a motion under MCR 2.612 to modify, alter or amend a judgment of foreclosure. Further, Westhaven Manor urges this Court to find that, to the extent the amendatory provisions of 2003 PA 263 deprive a circuit court of jurisdiction to entertain a motion under MCR 2.612, that such provisions are unconstitutional and violative of this Court's exclusive rulemaking authority under Const 1963, art 6, §5. Finally, Westhaven Manor urges this Court to consider, in its holding in this matter, that due process requires that property owners still in possession of their property, but wrongly affected by the judgment of foreclosure entered without notice or otherwise in violation of due process, must retain some manner by which to obtain relief from that judgment, which can only be supplied by a post-judgment motion under MCR 2.612.

Accordingly, Westhaven Manor urges affirmance of the Wayne County Circuit Court's decision in this matter.

Respectfully submitted,

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